

## Case Summary

## Civil Docket

**HDCV2005-00800**  
**Britt v DeRusse et al**

<b>File Date</b>	08/16/2005	<b>Status</b>	Disposed: transferred to other court (dtrans)		
<b>Status Date</b>	09/06/2005	<b>Session</b>	A - Civil A - CtRm 6		
<b>Origin</b>	1	<b>Case Type</b>	D99 - Misc equitable remedy		
<b>Lead Case</b>		<b>Track</b>	F		
<b>Service</b>	11/14/2005	<b>Answer</b>	01/13/2006	<b>Rule12/19/20</b>	01/13/2006
<b>Rule 15</b>	01/13/2006	<b>Discovery</b>	06/12/2006	<b>Rule 56</b>	07/12/2006
<b>Final PTC</b>	08/11/2006	<b>Disposition</b>	10/10/2006	<b>Jury Trial</b>	Yes

**PARTIES**

<b>Plaintiff</b> Caren Britt Active 08/16/2005	<b>Private Counsel 649532</b> Mark A. Tanner Morse & Sacks 31 Trumbull Road Northampton, MA 01060 Phone: 413-584-1287 Active 08/16/2005 Notify
<b>Defendant</b> S Ray DeRusse Service pending 08/16/2005	<b>Private Counsel 567796</b> David P Russman Michienzie & Sawin LLC 745 Boylston Street 5th Floor Boston, MA 02116 Phone: 617-227-5660 Fax: 617-227-5882 Active 09/06/2005 Notify
<b>Defendant</b> Veterans Group Life Insurance Service pending 08/16/2005	<b>Private Counsel 546321</b> William T Bogaert Wilson Elser Moskowitz Edelman & Dicker LLP 155 Federal Street 5th floor Boston, MA 02110 Phone: 617-422-5400 Fax: 617-423-6917 Active 09/06/2005 Notify
	<b>Private Counsel 650496</b> Carey L Bertrand Wilson Elser Moskowitz Edelman & Dicker LLP 155 Federal Street Boston, MA 02110 Phone: 617-422-5300 Fax: 617-423-6917 Active 09/06/2005 Notify

HDCV2005-00800  
Britt v DeRusse et al**Defendant**

Prudential Insurance Company of America  
Service pending 08/16/2005

**Private Counsel 546321**

William T Bogaert  
Wilson Elser Moskowitz Edelman & Dicker  
LLP  
155 Federal Street  
5th floor  
Boston, MA 02110  
Phone: 617-422-5400  
Fax: 617-423-6917  
Active 09/06/2005 Notify

**Private Counsel 650496**

Carey L Bertrand  
Wilson Elser Moskowitz Edelman & Dicker  
LLP  
155 Federal Street  
Boston, MA 02110  
Phone: 617-422-5300  
Fax: 617-423-6917  
Active 09/06/2005 Notify

**ENTRIES**

Date	Paper	Text
08/16/2005	1.0	Complaint & civil action cover sheet filed
08/16/2005		Origin 1, Type D99, Track F.
08/16/2005	2.0	Plaintiff Caren Britt's emergency ex parte motion for Temporary Restraining Order and Preliminary Injunction.
08/16/2005		MOTION (P#2) Court declines to issue a TRO. Order of Notice may issue for hearing on Preliminary Injunction. (Constance Sweeney, Justice). Notices in hand August 17, 2005
08/16/2005	3.0	Summons and order of notice issued; returnable August 25, 2005
08/24/2005		Court received faxed letter re Aug. 25 hearing which was taken off list
09/06/2005	4.0	Atty David P Russman's notice of appearance for S Ray DeRusse
09/06/2005	5.0	Case REMOVED this date to US District Court of Massachusetts

**EVENTS**

Date	Session	Event	Result
08/25/2005	Civil A - CtRm 6	Motion/Hearing: order of notice (3)	Event not held-joint request

A TRUE COPY  
OF THE DOCKET MINUTES  
IN WRITING WHEREOF, I hereunto  
set my hand, and have caused the seal  
of the Superior Court for the County  
of Hampden to be affixed on this  
12th day of September  
2005  
\_\_\_\_\_  
Gena M. DeRusse  
Deputy Clerk

## COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

HAMPDEN COUNTY  
SUPERIOR COURT**FILED**

SEP 07 2005

2917 Lipscomb

CAREN BRITT

Marie G. Bragga  
CLERK-MAGISTRATE

, PLAINTIFF(S)

SUPERIOR COURT  
DEPARTMENT OF THE TRIAL COURT  
CIVIL ACTION

NO. 05-800

5100-0000

## SUMMONS

RECEIVED  
Barbara J. Rouse, Esq.  
Clerk / MagistrateV.  
S. KRAY DeRUSSE and 2917 LIPSCOMB.VETERANS GROUP LIFE INSURANCE and  
PRUDENTIAL INSURANCE COMPANY, DEFENDANT(S)  
OF AMERICA

To the above named defendant:

You are hereby summoned and required to serve upon

Mark A. Tanner, Esq. Bacon & Wilson, P.C. Morse & Sacks, plaintiff's attorney, whose address is 31 Trumbull Rd. Northampton, MA 01060, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You are also required to file your answer to the complaint in the office of the Clerk of this court at Springfield either before service upon the plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by rule 13(a), your answer must state as a counterclaim any claim which you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

Witness, Barbara J. Rouse, Esq., at Springfield the 17th day of August 2005 in the year of our Lord two thousand five.

Clerk / Magistrate

## NOTES:

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all such defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.

## **PROOF OF SERVICE OF PROCESS**

I hereby certify and return that on Aug. 12, 2005, I served a copy of the within summons, together with a copy of the original complaint, in this action, upon the within named defendant, in the following manner (See Mass. R. Civ. P. 4 (d)(1-5):

## Integers at

2917 Lepscomb

Fort Worth, Texas

Deputy R.G. Peel

Dated: August 23, 2005

**CONSTABLE SERGIO DeLEON  
PCT. #5 TARRANT CO. TX**

**N.B. TO PROCESS SERVER:**

PLEASE PLACE DATE YOU MAKE SERVICE ON DEFENDANT IN THIS  
BOX ON THE ORIGINAL AND ON THE COPY SERVED ON DEFENDANT.

Douglas R. Lee

(

(August 28) 2005)

(1985), 2005)

**CONSTABLE SERGIO DeLEON  
PCT #5 TARRANT CO TX**

CLERKS OFFICE  
SUPERIOR COURT  
MAINE STATE

**Plaintiff health of Margaret S. Wettie**

HAMPDEN ss.

SUPERIOR COURT  
DEPARTMENT OF THE TRIAL COURT  
CIVIL ACTION

No. 05-800

CAREN BRITT, Plaintiff(s)v.  
S. RAY DeRUSSE and VETERANS GROUP LIFE INSURANCE and  
PRUDENTIAL INSURANCE COMPANY OF AMERICA, Defendant(s)SUMMONS AND ORDER OF NOTICE

To the above-named Defendants:

Mark A. Tanner, Esquire

You are hereby summoned and required to serve upon Bacon & Wilson, P.C./Morse & Sacks plaintiff's attorney, whose address is 31 Trumbull Road, Northampton, MA 01060

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You are also required to file your answer to the complaint in the office of the Clerk of this court at Springfield either before service upon plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13(a), your answer must state as a counterclaim any claim which you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

WE ALSO NOTIFY YOU that application has been made in said action, as appears in the Emergency Ex Parte Motion for Temporary Restraining Order and ~~Temporary Preliminary Injunction~~ preliminary injunction and that a hearing upon such application will be held at the court house at said Springfield in the A session without jury of our said court on Thursday the 25th day of August A.D. 2005, at 2:00 o'clock p.m., at which you may appear and show cause why such application should not be granted.

Witness, Barbara J. Rouse, Esquire, at Springfield the 16th day of August in the year of our Lord two thousand five.


  
CLERK/MAGISTRATE

## NOTES

- 1 This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
- 2 When more than one defendant is involved, the names of all defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.

7/8/05

3

PROOF OF SERVICE OF PROCESS

I hereby certify and return that on \_\_\_\_\_ I served a copy of the within summons and restraining orders, together with a copy of the complaint in this action, upon the within named defendant, in the following manner (See Mass. R. Civ. P. 4 (d) (1-5):

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Dated:

(  
\_\_\_\_\_  
)

N.B. TO PROCESS SERVER:-

PLEASE PLACE DATE YOU MAKE SERVICE ON DEFENDANT IN THIS BOX ON THE  
ORIGINAL AND ON COPY SERVED ON DEFENDANT.

**COMMONWEALTH OF MASSACHUSETTS****HAMPDEN, ss.**

**SUPERIOR COURT  
DEPARTMENT OF THE TRIAL COURT  
CIVIL ACTION  
NO.**

CAREN BRITT, PLAINTIFF(S)

V.

S. RAY DeRUSSE and  
VETERANS GROUP LIFE INSURANCE and  
~~PRUDENTIAL INSURANCE COMPANY OF~~ AMERICA, DEFENDANT(S)

**SUMMONS**

To the above named defendant:

You are hereby summoned and required to serve upon

Mark A. Tanner, Esq. Bacon & Wilson, P.C. Morse & Sacks, plaintiff's attorney, whose address is 31 Trumbull Road, Northampton, MA 01060, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You are also required to file your answer to the complaint in the office of the Clerk of this court at Springfield either before service upon the plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by rule 13(a), your answer must state as a counterclaim any claim which you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

Witness, Barbara J. Rouse, Esq., at Springfield the 17th \_\_\_\_\_ day of August \_\_\_\_\_ in the year of our Lord two thousand five.



Clerk / Magistrate

## NOTES:

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all such defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.

## PROOF OF SERVICE OF PROCESS

I hereby certify and return that on \_\_\_\_\_, 2005 , I served a copy of the within summons, together with a copy of the original complaint, in this action, upon the within named defendant, in the following manner (See Mass. R. Civ. P. 4 (d)(1-5)):

---

---

---

---

Dated: \_\_\_\_\_, 2005

**N.B. TO PROCESS SERVER:**

**PLEASE PLACE DATE YOU MAKE SERVICE ON DEFENDANT IN THIS  
BOX ON THE ORIGINAL AND ON THE COPY SERVED ON DEFENDANT.**

---

( \_\_\_\_\_ )  
( \_\_\_\_\_ , 2005 )  
( \_\_\_\_\_ )



**OFFICE OF SERVICEMEMBERS' GROUP LIFE INSURANCE**

290 West Mount Pleasant Avenue  
Livingston, New Jersey 07039

When calling from the United States, Canada, Puerto Rico,  
St. Thomas or St. Croix, please dial 1-800-419-1473.  
From any other area, please dial (973) 548-5699.  
FAX (800) 236-6142 Claim FAX (877) 832-4943

August 18, 2005

Bacon & Wilson, P.C  
Morse & Sacks  
Attorneys At Law  
31 Trumbull Rd  
Northampton, MA 01060

In Re: Ronald H Stewart  
Claim No.: **10618686**

Dear Sirs,

This is to confirm our receipt of the *Complaint and Emergency Ex Parte Motion for Temporary Restraining Order and Preliminary Injunction* and have accepted service. We have referred the case to our legal department for handling. You should be contacted in the near future by outside counsel.

If you have any questions, please do not hesitate to contact our office toll free at (800) 419-1473. I can be reached on extension 3969 between 8:00am and 4:00 pm Eastern time, Monday through Friday. If you prefer, you can send our office a fax at (877) 832-4943.

Sincerely,

Rose Silva  
Sr. Claim Examiner

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss

SUPERIOR COURT  
No. 05-800

CAREN BRITT, )  
Plaintiff )  
 )  
v. )  
 )  
S. RAY DeRUSSE and )  
VETERANS GROUP LIFE INSURANCE )  
And )  
PRUDENTIAL INSURANCE COMPANY )  
OF AMERICA, )  
Defendants )  
 )

HAMPTON COUNTY  
SUPERIOR COURT  
**FILED**

SEP 06 2005

*Marie J. Maggio*  
CLERK-MAGISTRATE

**NOTICE OF APPEARANCE**

To the Clerk:

Please enter my appearance as counsel for the defendant S. Ray DeRusse.

Respectfully submitted,

S. RAY DeRUSSE,  
By his attorney,

*David P. Russman*  
David P. Russman (BBO 567796)  
The Russman Law Firm, P.C.  
194 E Street, Suite 1  
Boston, MA 02127  
617.464.2332

Dated: August 31, 2005

A true copy:

Attest:

*Lena M. Durham*  
Lena M. Durham  
Deputy Assistant Clerk

24

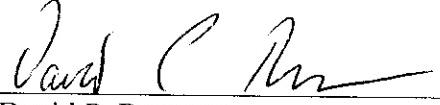
*Certificate of Service*

I, David Russman, hereby certify that I served a true and accurate copy of this document upon the following on August 31, 2005 via first-class mail, postage prepaid.

Mark A. Tanner, Esq.  
Bacon & Wilson / Morse & Sacks  
31 Trumbull Road  
Northampton, MA 01060

Carey Bertrand, Esq.  
Wilson Elser  
155 Federal Street  
Boston, MA 02110

Dated: August 31, 2005

  
\_\_\_\_\_  
David P. Russman

Commonwealth of Massachusetts  
Superior Court

HAMPDEN ss.

SUPERIOR COURT  
DEPARTMENT OF THE TRIAL COURT  
CIVIL ACTION

No. 05-800

CAREN BRITT, Plaintiff(s)

v.  
S. RAY DeRUSSE and VETERANS GROUP LIFE INSURANCE and  
PRUDENTIAL INSURANCE COMPANY OF AMERICA, Defendant(s)

SUMMONS AND ORDER OF NOTICE

To the above-named Defendants:

You are hereby summoned and required to serve upon Bacon & Wilson, P.C./Morse & Sacks plaintiff's attorney, whose address is 31 Trumbull Road, Northampton, MA 01060 an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You are also required to file your answer to the complaint in the office of the Clerk of this court at Springfield either before service upon plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13(a), your answer must state as a counterclaim any claim which you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

WE ALSO NOTIFY YOU that application has been made in said action, as appears in the ~~Emergency Ex Parte Motion for Temporary Restraining Order and~~ preliminary injunction and that a hearing upon such application will be held at the court house at said Springfield in the A session without jury of our said court on Thursday the 25th day of August A.D. 2005, at 2:00 o'clock p.m., at which you may appear and show cause why such application should not be granted.

Witness, Barbara J. Rouse, Esquire, at Springfield the 16th day of August in the year of our Lord two thousand five.

*Barbara J. Rouse*  
CLERK/MAGISTRATE

NOTES

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.

## COMMONWEALTH OF MASSACHUSETTS

HAMPDEN , SS.

HAMPDEN COUNTY  
SUPERIOR COURT Civil Action No. 65-800  
**FILED**

**CAREN BRITT,**  
Plaintiff

AUG 16 2005

*Diane S. Maggio*  
CLERK-MAGISTRATE

v. )  
**S. RAY DeRUSSE and )**  
**VETERANS GROUP LIFE INSURANCE)**  
and )  
**PRUDENTIAL INSURANCE )**  
**COMPANY OF AMERICA,**  
**Defendants )**  
) )

Emergency *Ex Parte* Motion for  
Temporary Restraining Order  
and Preliminary Injunction

Now comes Caren Britt, Plaintiff in the above-captioned matter, and hereby moves this Honorable Court to issue a preliminary injunction, pursuant to Mass.R.Civ.P. 65, prohibiting and enjoining the Defendants, from paying the proceeds of a certain life insurance policy named in the Verified Complaint during the pendency of the present action.

In further support of this motion, please see the Verified Complaint of the Plaintiff, the Affidavit of Caren Britt, the Affidavit of Mark A. Tanner, Esq., as well as the Memorandum of Law in support hereof, all of which documents are attached hereto and made a part hereof. A proposed Order is also submitted herewith.

ACON & WILSON, P.C.  
ATTORNEYS AT LAW  
33 STATE STREET  
SPRINGFIELD, MA 01103  
TELEPHONE (413) 781-0560  
FAX (413) 739-7740

9 CHAPEL STREET  
WESTFIELD, MA 01085  
TELEPHONE (413) 562-9607  
FAX (413) 562-7589

31 TRUMBULL ROAD  
ORTHAMPTON, MA 01060  
TELEPHONE (413) 584-1287  
FAX (413) 584-0453

*Court has ordered  
to issue a T.R.O.  
Order of Notice may  
be set for hearing  
on Prelim injunction  
C. Maggio  
8/19/05*

**WHEREFORE**, the Plaintiff respectfully requests that this Court issue a temporary restraining order and preliminary injunction, as set forth on the attached proposed Order.

Respectfully Submitted for  
The Plaintiff

8-15-05

Date

Mark A. Tanner

Caren Britt  
**Bacon & Wilson, P.C./Morse & Sacks**  
31 Trumbull Road  
Northampton, MA 01060  
Telephone: (413) 584-1287  
BBO No. 649532

ACON & WILSON, P.C.

ATTORNEYS AT LAW

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ELEPHONE (413) 781-0560

FAX (413) 739 7740

—  
9 CHAPEL STREET

WESTFIELD, MA 01085

ELEPHONE (413) 562-9607

FAX (413) 562-7589

—  
31 TRUMBULL ROAD

NORTHAMPTON, MA 01060

ELEPHONE (413) 584-1287

FAX (413) 584-0453

**A true copy:**

Attest:

Caren M. Denham  
Deputy Assistant Clerk

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN , SS.

SUPERIOR COURT DEPT.  
OF THE TRIAL COURT  
Civil Action No.

CAREN BRITT,	)	Memorandum of Law in Support of Emergency <i>Ex Parte</i> Motion for Temporary Restraining Order and Preliminary Injunction
Plaintiff	)	
v.	)	
S. RAY DeRUSSE and	)	
VETERANS GROUP LIFE INSURANCE)	)	
and	)	
PRUDENTIAL INSURANCE	)	
COMPANY OF AMERICA,	)	
Defendants	)	

This is an action on a declaratory judgment to determine the rights of the named parties to a certain life insurance policy.

**STATEMENT OF FACTS**

The Plaintiff relies on the statement of facts set forth in the verified complaint which is incorporated herein by reference.

**ARGUMENT**

In order to succeed in a motion for preliminary injunction, a party must establish:

1. A likelihood of success on the merits;
2. That he will suffer irreparable harm in the absence of injunctive relief; and
3. That the balance of the irreparable harm weighs in his favor.

See, Hull Municipal Lighting Plant v. Massachusetts Municipal Wholesale Electric Co.,

399 Mass. 640, 648 (1987); Brookline v. Goldstein, 388 Mass. 443, 447 (1983); Packaging

XCON & WILSON, P.C.  
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FAX (413) 739-7740  
  
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31 TRUMBULL ROAD  
ORTHAMPTON, MA 01060  
TELEPHONE (413) 584-1287  
FAX (413) 584-0453

Industries Group, Inc. v. Cheney, 380 Mass. 609, 617 (1980).

In the Packaging Industries Group case, the Supreme Judicial Court declared that the trial Judge must initially look at the combination of the moving party's claim for injury and his chances for success on the merits. If the Court is convinced that the moving party would be subjected to irreparable harm without an injunction, and that there is a likelihood of success for the moving party, then the Court balances the moving party's risk of irreparable harm against any similar risk of irreparable harm which granting the injunction might create for the opposing party.

As will be fully demonstrated below, the Plaintiff's request for the preliminary injunction satisfies each of the requisite criteria. Also, when the balancing is done, the Court should find that the Plaintiff is entitled to the requested injunction because little, if any, irreparable harm would be incurred by the Defendants as a result of the requested injunction.

#### **I. Plaintiffs Have a Substantial Likelihood of Success on the Merits.**

The Plaintiffs can show by clear, testimonial evidence that Mr. Stewart intended, and believed Mrs. Britt was the beneficiary of his VGLI insurance policy and other service-related benefits. This is demonstrated not only by the statements he made during his lifetime, but also by the fact that he filled out certain forms changing his beneficiaries. Further, given the volatile end to the relationship between Mr. Stewart and Mr. DeRusse, it is unlikely that Mr. Stewart intended him to benefit in any manner from his death.

ACON & WILSON, P.C.  
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ORTHAMPTON, MA 01060  
ELEPHONE (413) 584-1287  
FAX (413) 584-0453

**II. Without a preliminary injunction, the Plaintiff will suffer irreparable harm.**

Without the injunction, irreparable harm will result to the Plaintiff, including, but not limited to:

- A. The payment of the proceeds of Mr. Stewart's life insurance policy to an individual Mr. Stewart did not intend to benefit at the time of his death.
- B. The possibility that once such funds are paid, the ability of the Plaintiff to recover such funds will dissipate, as the cash proceeds are easily spent and/or converted.

**III. A balance of harms clearly weighs in the Plaintiff's favor.**

Where, as in the case at bar, the Plaintiff has demonstrated that the failure to issue the injunction would result in substantial risk of irreparable harm, and he has demonstrated a likelihood of success on the merits, the Court must balance the risk of irreparable harm to the Plaintiff against any similar risk which granting the injunction would create for the opposing party. See, Packaging Industries Group, 380 Mass. at 617.

In this instant case, no irreparable harm will occur to the Defendants should the Plaintiff's request for injunctive relief be allowed; since the proceeds of the life insurance policy at issue will not be paid to any individual or entity, rather they will be held until such time as this court is able to make a full and final determination of this matter.

**CONCLUSION**

For the foregoing reasons, the preliminary injunction should issue, preventing the Defendants, during the pendency of this action, from dispersing the proceeds of the life insurance at issue to any individual or entity.

ACON & WILSON, P.C.  
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—  
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ORTHAMPTON, MA 01060  
TELEPHONE (413) 584-1287  
FAX (413) 584-0453

Respectfully Submitted the Plaintiff  
By Her Attorney,

8-15-05

Date



Mark A. Tanner  
**Bacon & Wilson, P.C./Morse & Sacks**  
MORSE & SACKS  
31 Trumbull Road  
Northampton, MA 01060  
Telephone: (413) 584-1287  
BBO No. 649532

**BACON & WILSON, P.C.**

ATTORNEYS AT LAW

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TELEPHONE (413) 584-1287

FAX (413) 584-0453

## COMMONWEALTH OF MASSACHUSETTS

HAMPDEN , SS.

SUPERIOR COURT DEPT.  
OF THE TRIAL COURT  
Civil Action No.

<b>CAREN BRITT,</b>	)	<b>Affidavit of Mark A. Tanner in Support of Emergency <i>Ex Parte</i> Temporary Restraining Order Preliminary Injunction</b>
<b>Plaintiff</b>	)	
<b>v.</b>	)	
<b>S. RAY DeRUSSE and</b>	)	
<b>VETERANS GROUP LIFE INSURANCE)</b>	)	
<b>and</b>	)	
<b>PRUDENTIAL INSURANCE</b>	)	
<b>COMPANY OF AMERICA,</b>	)	
<b>Defendants</b>	)	
	)	

Now comes Mark A. Tanner and, making this affidavit under the penalties of perjury, states that the allegations made below are true of his own knowledge, information and belief and, so far as the facts are stated to be upon information and belief, he believes such information to be true.

1. My name is Mark A. Tanner. I am an attorney at Bacon & Wilson, P.C./Morse & Sacks in Northampton, Massachusetts.
2. I am licensed to practice law in the State of New York and the Commonwealth of Massachusetts.
3. I have had numerous telephone conversations with representatives of Veterans Group Life Insurance (VGLI).
4. I have asked these representatives whether competing claims have been filed for the insurance death benefits of Mr. Stewart.

ACON & WILSON, P.C.  
ATTORNEYS AT LAW  
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FAX (413) 584-0453

5. I have been informed by representatives of VGLI that they cannot provide me with information regarding the name of the beneficiary of Mr. Stewart's benefits, or whether claims have been made for such benefits.
6. I have been further informed by such representatives that they would not release such information without a court order, and that they would not withhold payment of such death benefits absent a court order.
7. The named defendants in this action are not physically located in the Commonwealth and will take some time to serve.

Signed this 15<sup>th</sup> Day of August 2005.



Mark A. Tanner, Esq.

ACON & WILSON, P.C.  
ATTORNEYS AT LAW  
33 STATE STREET  
SPRINGFIELD, MA 01103  
TELEPHONE (413) 781-0560  
FAX (413) 739-7740

—  
9 CHAPEL STREET  
WESTFIELD, MA 01085  
TELEPHONE (413) 562-9607  
FAX (413) 562-7589

—  
31 TRUMBULL ROAD  
NORTHAMPTON, MA 01060  
TELEPHONE (413) 584-1287  
FAX (413) 584-0453

**COMMONWEALTH OF MASSACHUSETTS****HAMPDEN , SS.**

**SUPERIOR COURT DEPT.  
OF THE TRIAL COURT  
Civil Action No.**

<b>CAREN BRITT,</b>	)
Plaintiff	)
	)
v.	)
	)
<b>S. RAY DeRUSSE and</b>	)
<b>VETERANS GROUP LIFE INSURANCE)</b>	)
and	)
<b>PRUDENTIAL INSURANCE</b>	)
<b>COMPANY OF AMERICA,</b>	)
Defendants	)
	)

**Affidavit of Caren Britt in  
Support of Emergency *Ex Parte*  
Temporary Restraining Order and  
Preliminary Injunction**

Now comes Caren Britt and, making this affidavit under the penalties of perjury, states that the allegations made below are true of her own knowledge, information and belief and, so far as the facts are stated to be upon information and belief, she believes such information to be true.

1. My name is Caren Britt.
2. I reside at 36 Clayton Drive, West Springfield, Massachusetts.
3. My brother Ronald H. Stewart died on or about May 18, 2005 in Springfield, Hampden County, Massachusetts.
4. Prior to his retirement, Ronald H. Stewart served in the United States Navy.
5. During such service in the United States Navy, Mr. Stewart obtained a Veterans Group Life Insurance Policy Numbered 026-40-4232.

ACON &amp; WILSON, P.C.

ATTORNEYS AT LAW

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ORTHAMPTON, MA 01060

ELEPHONE (413) 584-1287

FAX (413) 584-0453

6. Prior to his death, Mr. Stewart resided with my family and me at 36 Clayton Drive, West Springfield, Massachusetts.
7. Based upon information and belief, S. Ray DeRusse is the former partner of Ronald H. Stewart.
8. On or about the year of 1996 S. Ray DeRusse and my brother ceased their relationship.
9. Based upon information and belief, the relationship between S. Ray DeRusse and my brother was abusive and that Mr. Stewart suffered bodily injury at the hands of Mr. DeRusse.
10. On or about October 28, 2000 my brother named me as the 100% beneficiary of his service member's retirement benefits.
11. Since 2004, the Defense Finance and Accounting Agency mailed me a monthly check representing my brother's retirement.
12. During the time he lived with my family and me, my brother, on numerous occasions, informed me that I was the sole beneficiary of his life insurance policy and that he intended me to have the proceeds of the policy.
13. Based upon information and belief, during his lifetime my brother verbally informed his stepson Glen Wilson that I was the sole beneficiary of his VGLI life insurance policy. I have had conversations with Mr. Wilson in this regard.
14. During his lifetime Mr. Stewart verbally informed other members of his family that I was the sole beneficiary of his VGLI life insurance policy.

ACON & WILSON, P.C.  
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15. On or about June 2, 2005, I telephoned the offices of VGLI with regard to my brother's life insurance benefits and was informed that I was the designated beneficiary.
16. Based upon this telephone call, I submitted an application for payment of benefits under the VGLI Life Insurance Policy.
17. Approximately five weeks after my submission for payment of benefits, I telephoned VGLI and was informed that I was not the named beneficiary.
18. I believe S. Ray DeRusse is the named beneficiary.
19. Despite numerous requests VGLI will not release the name of the beneficiary, and instructed me to seek injunctive relief to resolve this matter or they would release payment to the "named" beneficiary.

Signed this 15<sup>th</sup> day of August 2005.

  
Caren Britt

JACON & WILSON, P.C.

ATTORNEYS AT LAW

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## COMMONWEALTH OF MASSACHUSETTS

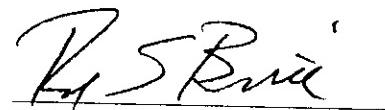
HAMPDEN , SS.

**SUPERIOR COURT DEPT.  
OF THE TRIAL COURT  
Civil Action No.**

<b>CAREN BRITT,</b>	)	<b>Affidavit of Robert Britt in Support of Emergency <i>Ex Parte</i> Temporary Restraining Order and Preliminary Injunction</b>
<b>Plaintiff</b>	)	
<b>v.</b>	)	
<b>S. RAY DeRUSSE and</b>	)	
<b>VETERANS GROUP LIFE INSURANCE)</b>	)	
<b>and</b>	)	
<b>PRUDENTIAL INSURANCE</b>	)	
<b>COMPANY OF AMERICA,</b>	)	
<b>Defendants</b>	)	

1. My name is Robert Britt.
2. I reside at 36 Clayton Drive, West Springfield, Massachusetts.
3. My brother in Law Ronald H. Stewart died on or about May 18, 2005 in Springfield, Hampden County, Massachusetts.
4. Prior to his death Ron lived with us for some period of time.
5. During this time Ron never spoke of Mr. DeRusse, although we knew they had previously been in a relationship.

Signed this 15<sup>th</sup> day of August 2005.



Robert Britt

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CIVIL ACTION  
COVER SHEET

Case 3:05-cv-30197-MAP

DOC. #/CKET NO.(S)

Document 8-2  
05-300

Filed 09/19/2005

Probate and Family Court of Massachusetts  
Superior Court Department

County:

PLAINTIFF(S)

Karen Britt

ATTORNEY, FIRM NAME, ADDRESS AND TELEPHONE

MARK A. Tanner  
Bacon Wilson Inc. & Sacks 31 Trumbull Rd  
Northampton, MA 01060  
Board of Bar Overseers number: 390 649532 (413) 584-1287

DEFENDANT(S)

S. Ray DeBuisse; Prudential Insurance Co. of America, Inc.;  
Veterans Group Life Insurance

ATTORNEY (if known)

## Origin code and track designation

Place an x in one box only:

1. F01 Original Complaint  
 2. F02 Removal to Sup.Ct. C.231,s.104  
 (Before trial) (F)  
 3. F03 Retransfer to Sup.Ct. C.231,s.102C (X)

4. F04 District Court Appeal c.231, s. 97 &104 (After trial) (X)  
 5. F05 Reactivated after rescript; relief from judgment/Order (Mass.R.Civ.P. 60) (X)  
 6. E10 Summary Process Appeal (X)

CODE NO.

D 99

## TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)

TYPE OF ACTION (specify) TRACK IS THIS A JURY CASE?

Declaratory  
Judgement/Life Insurance (F)

(✓) Yes

( ) No

The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

## TORT CLAIMS

(Attach additional sheets as necessary)

- A. Documented medical expenses to date:  
 1. Total hospital expenses ..... \$ .....  
 2. Total Doctor expenses ..... \$ .....  
 3. Total chiropractic expenses ..... \$ .....  
 4. Total physical therapy expenses ..... \$ .....  
 5. Total other expenses (describe) ..... \$ .....  
 HAMDEN COUNTY ..... \$ .....  
 SUPERIOR COURT ..... \$ .....  
 FILED ..... \$ .....  
 AUG 16 2005 ..... \$ .....  
 Subtotal \$ ..... \$ .....  
 B. Documented lost wages and compensation to date ..... \$ .....  
 C. Documented property damages to date ..... \$ .....  
 D. Reasonably anticipated future medical and hospital expenses ..... \$ .....  
 E. Reasonably anticipated lost wages ..... \$ .....  
 F. Other documented items of damages (describe) ..... \$ .....  
 G. Brief description of plaintiff's injury, including nature and extent of injury (describe) ..... \$ ..... N/A .....  
 N/A ..... \$ ..... N/A .....  
 \$ ..... N/A .....  
 TOTAL \$ ..... N/A .....

## CONTRACT CLAIMS

(Attach additional sheets as necessary)

Provide a detailed description of claim(s):

N/A / Claim for Declaratory Judgment as to Life Insurance  
Proceeds

TOTAL \$ ..... N/A .....

PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT

NONE

A. true copy:

"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."

Signature of Attorney of Record

 Karen M. Durkin  
Assistant Clerk

DATE: 8-16-04

## COMMONWEALTH OF MASSACHUSETTS

HAMPDEN , SS.

SUPERIOR COURT DEPT.  
OF THE TRIAL COURT  
Civil Action No.

CAREN BRITT,	)
Plaintiff	)
	)
v.	)
S. RAY DeRUSSE and	)
VETERANS GROUP LIFE INSURANCE	)
and	)
PRUDENTIAL INSURANCE	)
COMPANY OF AMERICA,	)
Defendants	)

CIVIL 800

## VERIFIED COMPLAINT

HAMPDEN COUNTY  
SUPERIOR COURT  
**FILED**  
AUG 16 2005

Marie Pazzaglia  
CLERK-MAGISTRATE

INTRODUCTION

The Plaintiff brings this civil action, to determine the rightful owner of the proceeds of a life insurance policy on the life of Mr. Ronald H. Stewart (deceased) issued by Veterans Group Life Insurance.

PARTIES

1. Caren Britt is a natural person with a residential address of 36 Clayton Drive, West Springfield, Massachusetts.
2. S. Ray DeRusse is a natural person with a residential address of 2917 Lipscomb Street, Fort Worth, Texas 76110-3557.
3. Veterans Group Life Insurance/Servicemen's and Veterans Group Life Insurance (hereinafter "VGLI") is a life insurance company with an address of 213 Washington Street, Newark, New Jersey.

No. 61746. 1  
 Fee Paid - \$ 240.00 Cash Check  
 Surcharge Paid - \$ 15.00 Cash Check  
 Security Fee = Paid - \$ 20.00 Cash Check  
 Received by: [Signature]

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FAX (413) 584-0453

4. The Prudential Insurance Company of America is a New Jersey Corporation authorized to sell life insurance and annuities in all states, with a business address of 751 Broad Street, Newark, New Jersey.

### FACTS

5. Ronald H. Stewart died on or about May 18, 2005 in Springfield, Hampden County, Massachusetts. See Attachment A, attached hereto and incorporated herein.
6. Prior to his retirement Ronald H. Stewart served in the United States Navy.
7. During his service in the United States Navy, Mr. Stewart obtained a Veterans Group Life Insurance Policy Numbered 026-40-4232.
8. Prior to his death Mr. Stewart resided with his sister, Caren Britt and her family, at 36 Clayton Drive, West Springfield, Massachusetts.
9. Caren Britt, is the sister of Ronald H. Stewart.
10. Based upon information and belief, S. Ray DeRusse is the former partner of Ronald H. Stewart.
11. On or about the year 1996 S. Ray DeRusse and Ronald H. Stewart ceased their relationship.
12. Based upon information and belief, the relationship between S. Ray DeRusse and Ronald H. Stewart was abusive, and that Mr. Stewart suffered bodily injury at the hands of Mr. DeRusse.
13. On or about October 28, 2000 Ronald H. Stewart named Caren Britt as the 100% beneficiary of his service member's retirement benefits. See Attachment B, attached hereto and incorporated herein.

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14. During his lifetime Mr. Stewart verbally informed Ms. Britt that she was the sole beneficiary of his life insurance policy.
15. During his lifetime Mr. Stewart verbally informed his stepson Glen Wilson that Ms. Britt was the sole beneficiary of his VGLI life insurance policy.
16. During his lifetime Mr. Stewart verbally informed other members of his family that Ms. Britt was the sole beneficiary of his VGLI life insurance policy.
17. On or about June 2, 2005, Ms. Britt telephoned the offices of VGLI with regard to Mr. Stewart's life insurance benefits and was informed that she was the designated beneficiary.
18. Based upon the June 2, 2005 telephone call, Ms. Britt submitted an application for payment of benefits under the VGLI life insurance policy.
19. Approximately five weeks after her submission for payment of benefits, Ms. Britt telephoned VGLI and was informed that she was not the named beneficiary.
20. Based upon information and belief S. Ray DeRusse is the named beneficiary.
21. Despite numerous requests VGLI will not release the name of the beneficiary, and instructed Ms. Britt to seek injunctive relief to resolve this matter.

**First Claim for Relief**

**Declaratory Judgment**

1. The Plaintiffs hereby re-allege and incorporate by reference Paragraphs 1.

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through 21. above, as though fully set forth herein.

2. There exists between the parties to this action an actual justifiable controversy regarding the rightful beneficiary of the aforementioned life insurance policy.

**WHEREFORE**, the Plaintiffs pray that this Honorable Court:

1. Adjudicate the adverse claims to the VGLI Insurance Policy Numbered 026-40-4232;
2. Award the Plaintiff, Caren Britt, the costs incurred in bringing this action; and
3. Grant such other and further relief as this Honorable Court may determine is just and proper.

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VERIFICATION

Caren Britt, being duly sworn, states that that she has read the above Complaint and the attached documents, and that the facts stated therein are to her knowledge true.

*Caren Britt*  
CAREN BRITT

Respectfully Submitted for the Plaintiff,

8-15-05

Date

*[Signature]*  
Mark A. Tanner, Esq.  
**Bacon & Wilson, P.C./Morse & Sacks**  
31 Trumbull Road  
Northampton, MA 01060  
Telephone: (413) 584-1287  
BBO No. 649532

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A true copy:

Attest:

*Linda M. O'Brien*  
Deputy Assistant Clerk

(INSTRUCTIONS ON REVERSE SIDE)

STANDARD CERTIFICATE OF DEATH  
REGISTRY OF VITAL RECORDS AND STATISTICS

Filed 09/19/2005 Page 19 of 20

FOR USE BY  
PHYSICIANS AND  
MEDICAL EXAMINERS

STATE USE  
ONLY

4c Hosp

5 Type

1 Hisp Race

0 Age

i Resd

Out-State

Disp

32 Autop

Manner

Work Inj

Place

Cert

Pron

Announcement of Death  
(R-302) on File: PERMANENT  
INK ONLY

31

DECEDENT - NAME		FIRST	MIDDLE	LAST	SEX	REGISTERED NUMBER	STATE USE ONLY
		Ronald	Hamilton	Stewart	M		DATE OF DEATH (Mo. Day, Yr.)
PLACE OF DEATH (City/Town)		COUNTY OF DEATH		HOSPITAL OR OTHER INSTITUTION - Name (If not in either, give street and number)			
Springfield		Hampden		Baystate Medical Center			
PLACE OF DEATH (Check only one): HOSPITAL: <input type="checkbox"/> Inpatient <input checked="" type="checkbox"/> Outpatient <input type="checkbox"/> DOA		OTHER: <input type="checkbox"/> Nursing Home <input type="checkbox"/> Residence <input type="checkbox"/> Other (Specify)		SOCIAL SECURITY NUMBER		IF US WAR VETERAN SPECIFY WAR Vietnam	
5		4a		6		7	
WAS DECEDENT OF HISPANIC ORIGIN? <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES		RACE (e.g. White, Black, American Indian, etc.) (Specify)		DECEDED'S EDUCATION (Highest Grade Completed) Elementary Sec (0-12) College (1-6, 5+)			
8a Specify:		White		8b		9	
AGE - Last Birthday (Yrs)		UNDER 1 YEAR MOS.	UNDER 1 DAY DAYS	DATE OF BIRTH (Mo. Day, Yr.)	BIRTHPLACE (City and State or Foreign Country)		
56		b	c	Feb 10, 1949	Birkenhead, England		
10a MARRIED, NEVER MARRIED WIDOWED OR DIVORCED		LAST SPOUSE (If wife, give maiden name)		USUAL OCCUPATION (Prior - If Retired)		KIND OF BUSINESS OR INDUSTRY	
Divorced		Nisha Unknown		14a Documents Manager		14b Pharmaceutical	
12 RESIDENCE - NO & ST. CITY/TOWN, COUNTY, STATE/COUNTRY		13		14		ZIP CODE	
15a FATHER - FULL NAME		16 STATE OF BIRTH (If not in U.S. (name country)		17 MOTHER - NAME (GIVEN) (MAIDEN)		18 STATE OF BIRTH (If not in the U.S. (name country)	
James Stewart		England		Marilyn Stewart		England	
INFORMANT		Caren Britu		MAILING ADDRESS - NO & ST. CITY/TOWN, STATE, ZIP CODE		01089 RELATIONSHIP	
20		21		36 Clayton Dr WEst Springfield MA		22 Sister	
23 METHOD OF IMMEDIATE DISPOSITION <input type="checkbox"/> BURIAL <input checked="" type="checkbox"/> CREMATION <input type="checkbox"/> REMOVAL FROM STATE		24 FUNERAL SERVICE LICENSEE OR OTHER DESIGNEE		Joseph J. Nowak		LICENSING	
25 PLACE OF DISPOSITION (Name of Cemetery, Crematory or other)		26a LOCATION (City/Town, State)		26b Springfield Massachusetts		5957	
27 DATE OF DISPOSITION (Mo. Day, Yr.) May 23, 2005		28 NAME AND ADDRESS OF FACILITY OR OTHER DESIGNEE		29 Nowak Funeral and Cremation Services 15 ludlow Ave Spfld MA		C1151	
29 PART I - Enter the diseases, injuries, or complications that caused the death. Do not use only the mode of dying, such as cardiac or respiratory arrest, shock or heart failure List only one cause on each line (a through d) PRINT OR TYPE LEGIBLY IMMEDIATE CAUSE (Final disease or condition resulting in death) → <i>Cardiopulmonary Arrest</i> DUE TO (OR AS A CONSEQUENCE OF) SEQUENTIALLY list conditions, if any, leading to immediate cause. Enter UNDERLYING CAUSE (disease or injury that initiated events resulting in death) LAST → <i>Coronary Artery Disease</i> DUE TO (OR AS A CONSEQUENCE OF)							
Approximate Interval Between Onset and Death hours Years							
PART II - Other significant conditions contributing to death but not resulting in underlying cause given in Part I.							
30 MED. EXAM. NOTIFIED? <input checked="" type="checkbox"/> YES		31 MANNER OF DEATH <input checked="" type="checkbox"/> NATURAL <input type="checkbox"/> HOMICIDE <input type="checkbox"/> COULD NOT BE DETERMINED		32 DATE OF INJURY (Mo. Day, Yr.)		33 TIME OF INJURY	
33		<input type="checkbox"/> ACCIDENT <input type="checkbox"/> SUICIDE <input type="checkbox"/> PENDING INVESTIGATION		35a		35b	
34 DESCRIBE HOW INJURY OCCURRED PLACE OF INJURY (At home, farm, street, factory, office bldg., etc.) Specify LOCATION (No. & St. City/Town, State)							
35d		35e		35f		35g	
36a To the best of my knowledge, death occurred at the time, date, and place and due to the cause(s) stated. (Signature and Title) <i>J. Ishida MD</i>		36b HOUR OF DEATH 36c 10:11 p.m.		37a On the basis of examination and/or investigation in my opinion death occurred at the time, date, and place and due to the cause(s) stated. (Signature and Title)		37b DATE SIGNED (Mo. Day, Yr.)	
36b DATE SIGNED (Mo. Day, Yr.) <i>May 18, 2005</i>		36c		37c HOUR OF DEATH			
36c NAME OF ATTENDING PHYSICIAN IF NOT CERTIFIED <i>Joseph Torrey, MD</i>		36d		37d PRONOUNCED DEAD (Mo. Day, Yr.)		37e PRONOUNCED DEAD (HR)	
36d NAME AND ADDRESS OF CERTIFYING PHYSICIAN OR MEDICAL EXAMINER (Type or Print) <i>Jay Ishida MD 759 Chestnut Street Springfield, MA 01099</i>							
37a DATE SIGNED (Mo. Day, Yr.) <i>May 18, 2005</i>							
37b TITLE							
37c P.R.N. <input type="checkbox"/> P.A. <input type="checkbox"/>							
37d DATE OF RECORD <i>MAY 24, 2005</i>							
37e LICENSE NO. OF CERTIFIER <i>314703</i>							
38 WAS THERE A PRONOUNCEMENT FORM? <input type="checkbox"/> IF YES, DATE PRONOUNCED <input type="checkbox"/> IF YES, TIME PRONOUNCED 40d NAME OF PRONOUNCER							
40a NO		40b		40c M		40d	
41 DATE BURIAL PERMIT ISSUED <i>May 20, 2005</i>							
42 RECEIVED IN THE CITY/TOWN OF SPRINGFIELD CLERK'S SIGNATURE <i>C. Dunnigan</i>							
43 DATE OF RECORD <i>MAY 24, 2005</i>							

City of Springfield, Mass., May 25, 2005

I, Harry Barnes, am the Assistant City Clerk of the City of Springfield, Commonwealth of Massachusetts. That the records of births, marriages and deaths in said City are in my custody, and that the foregoing is a true copy of the return of a death on file in the office of the City Clerk of said Springfield.

Witness my hand and the seal of the said City of Springfield, May 25, 2005

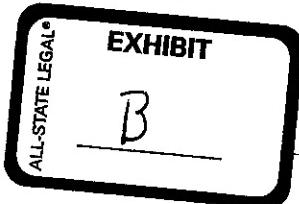
Attest:

*Mary C. Barnes*  
Assistant City Clerk of Springfield, Mass.

EXHIBIT

A

ALL-STATE LEGAL



RETired MEMBER'S NAME <b>RONALD HAMILTON STEWART</b>		RETired MEMBER'S SSN <b>026 40 4232</b>
TYPE OF ACTION: <input type="checkbox"/> LEGAL ORDER OF PRECEDENCE <input type="checkbox"/> DESIGNATION OF BENEFICIARIES		
SHARE <b>100 %</b>	FULL NAME <b>CAREN BRITT</b>	SSN <b>010 504817</b>
	ADDRESS <b>36 CLAYTON DRIVE W Spfld MA 010</b>	RELATIONSHIP <b>SISTER</b>
SHARE <b>%</b>	FULL NAME	SSN
	ADDRESS	RELATIONSHIP
SHARE <b>%</b>	FULL NAME	SSN
	ADDRESS	RELATIONSHIP
RETired MEMBER SIGNATURE <b>Ronald H Stewart</b>		DATE OF SIGNATURE <b>10-26-00</b>
WITNESS SIGNATURE (other than designated beneficiary/Order of Precedence Person) <b>Bruin Slapp</b>		
WITNESS STREET ADDRESS <b>20721 Crystallill Cir</b>		WITNESS CITY, STATE, ZIP CODE <b>Germantown MD 20874</b>

196195